FILE COPY

Office - Supreme Court, U. S.
FILED
DEC 12 1941
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 81

JULIAN RILEY and HUGHES SPALDING, EXECUTORS OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED,
Petitioners,

vs.

THE NEW YORK TRUST COMPANY, ADMINISTRATOR C. T. A. OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED, ET AL.
Respondents.

REPLY BRIEF FOR PETITIONERS

DAN MACDOUGALD,
JAMES A. BRANCH,
ROBERT S. SAMS,
Atlanta, Georgia;
AARON FINGER,
Wilmington, Delaware,
Attorneys for Petitioners.

Of Counsel:
MACDOUGALD, TROUTMAN & ARKWRIGHT,
Atlanta, Georgia

RICHARDS, LAYTON & FINGER,
Wilmington, Delaware

INDEX

	Page
The Issue Before the Delaware Court	1
This Case Can Not Be Determined by Assuming that New York Was in Fact Decedent's Domicile	3
Respondent May Not Dispute Effect of Georgia Judgment	4
However Classified, Georgia Judgment Determined Petitioners' Title	10
The Issue of Domicile was Essential to, and Determined in, Georgia Proceedings	10
Existence of New York Creditors Immaterial	11
As to the "Sovereign Right" of the State of New York to Control the Administration	11
There is no Merit in the Contention that the Court is Prevented from Giving Effect to Georgia Judgment by Failure to Prove its Effect under Georgia Law	13
As to Georgia Judgment Determining Domicile Not being Conclusive as to Domicile under Delaware Law	17
Conclusion	18

CASES CITED

	Page
Baker v. Baker, Eccles & Company, 242 U. S. 394	7, 9
Buchan v. Williamson, 142 Ga. 198, 82 S. E. 548	7
Chicago, Rock Island & Pacific Railway v. Schendel, 270 U. S. 611	8
Drake v. Drake, 187 Ga. 423, 1 S. E. (2d) 573	8
Dyal v. Dyal, 187 Ga. 600, 1 S. E. (2d) 660	8
Gibson, Lucy Haines, v. R. W. Solomon, 136 Ohio St. 101, 23 N. E. 996, 126 A. L. R. 803	9
Gratton's Estate, In Re, 78 N. J. Eq. 225, 78 A. 813	6
Lutz v. Roberts Cotton Oil Co., 26 Del. 227, 82 Atl. 601	16
Mahoning Valley Rwy. Co. v. Van Alstine, Admr., 77 Ohio St. 394, 83 N. E. 601, 14 L. N. S. 893	9
May Coal Co. v. Robinet, Admr., 120 Ohio St. 110, 165 N. E. 576, 64 A. L. R. 441	9
Overby v. Gordon, 177 U. S. 214	4, 9
Parks, In Re Estate of, 166 Iowa 403, 147 N. E. 850	8
Tant v. Wigfall, 65 Ga. 412	15
Thomas v. Morrisett, 76 Ga. 384	7, 8
Thormann v. Frame, 176 U. S. 350	4, 9
Veach v. Rice, 131 U. S. 293	15
Wash v. Dickson, 147 Ga. 540	15
Wilkins v. Ellett, Admr., 9 Wall. 740	2, 12

STATUTES CITED

	Page
Sec. 113-602, Georgia Code of 1933	14, 15
Sec. 113-603, Georgia Code of 1933	14
Sec. 113-902, Georgia Code of 1933	14
Sec. 3868, Delaware Code	16

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 81

JULIAN RILEY and HUGHES SPALDING, EXECUTORS OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED,
Petitioners,

vs.

THE NEW YORK TRUST COMPANY, ADMINISTRATOR C. T. A. OF THE ESTATE OF JULIA M. HUNGERFORD, DECEASED, ET AL,
Respondents.

REPLY BRIEF FOR PETITIONERS

Respondent's brief tends to obscure the relatively simple question in this case. Therefore, as a foundation for our reply, we deem it advisable to re-state the issue.

The Issue Before the Delaware Court

Julia M. Hungerford, the decedent, at the time of her death, was the owner of stock of Coca-Cola International Corporation. That corporation filed in Delaware a bill of interpleader for the purpose of determining *who succeeded to the title to said stock at decedent's death.* This was the only issue to be determined.

The law is clearly established that title to the personalty of a decedent in such a case becomes vested in the domi-

ciliary representatives of decedent's estate for the purpose of succession and distribution according to the law of the domicile. It is difficult to find any better statement of the applicable law than that contained in *Wilkins v. Ellett, Administrator*, 9 Wall. 740, in which this Court said:

> "It has long been settled, and is a principle of universal jurisprudence, in all civilized nations, that the personal estate of the deceased is to be regarded, for the purpose of succession and distribution, wherever situated, as having no other locality than that of his domicile; and, if he dies intestate, the succession is governed by the law of the place where he was domiciled at the time of his decease, and not by the conflicting laws of the various places where the property happened at the time to be situated. The original administrator, therefore, with letters taken out at the place of the domicile, is invested with the title to all the personal property of the deceased for the purpose of collecting the effects of the estate, paying the debts, and making distribution of the residue, according to the law of the place, or directions of the will, as the case may be."

The Executors claimed title to the stock as the domiciliary representatives of decedent's estate. Their title resulted from a general or domiciliary probate by a court of competent jurisdiction having as parties thereto all persons interested in the succession either as beneficiaries under the Will or as heirs at law, in which proceeding the domicile of the decedent was determined and this adjudication affirmed by the Supreme Court of Georgia. The Executor's title can not be challenged for the reason that it was conclusive upon all persons having an interest in the succession and is, therefore, conclusive against all the world in any contest involving the succession to assets of the estate.

The New York Administrator had no right to challenge the title of the Executors in the Delaware proceedings, since

the sole issue was that of succession. The New York Administrator was not entitled to be heard because it was not a party interested in the succession and represented no party interested in the succession who was not already bound. As neither a creditor nor tax claimant is entitled to be heard on the succession, the New York Administrator was not entitled to be heard on their behalf on the sole question presented to the Delaware court. The right of the State of New York to collect estate or inheritance taxes was not involved in the Delaware interpleader suit.

This Case Can Not Be Determined by Assuming That New York Was in Fact Decedent's Domicile

The Delaware Supreme Court based its decision on its finding that New York was the domicile of the decedent and, therefore, respondent was the domiciliary representative. Counsel for respondent fall into the same error and base each argument on the same assumption, instead of showing why the Delaware court had power to ignore the Georgia judgment and to enter upon the inquiry of domicile for itself.

The question here presented is not what effect is to be given to the Georgia judgment upon an assumption that New York and not Georgia was the domicile of decedent at the time of her death, but whether the Delaware court, in view of the Georgia judgment, had the right to decide the question of domicile for itself, and, based upon its finding of domicile to hold that the Georgia judgment did not establish the title of the Executors.

In effect, what the Supreme Court of Delaware has held, and what counsel for the respondent assert, is that there can be no conclusive determination of the succession and

distribution, even when all persons entitled to be heard on such questions are before the court.

Respondent May Not Dispute Effect of Georgia Judgment

We have again stated the nature of the question presented, for the reason that we feel the error committed by the Delaware Supreme Court was due to confusion as to the problem and the rules applicable to its solution.

When the rules applicable are considered, it is unnecessary to approach the problem from the standpoint of trying to decide the question on the basis of whether the New York Administrator was a party to or in privity with a party to the Georgia judgment. It is clear that it was not a party to the Georgia judgment. It is equally clear that *on a question involving the succession*, it had no right to challenge the Georgia judgment determining that question, unless it represented or was in privity with one who was entitled to be heard on that question. But as all persons who were entitled to be heard, were before the Georgia court, and are concluded, respondent represented no one who was not already bound. If its appearance in the Delaware proceedings was not as a representative of a person entitled to be heard, then it was a stranger to the question presented and clearly had no rights in the proceedings. It must be remembered that the proceeding in Delaware was not one to assess estate taxes for the benefit of the State of New York. It was simply an interpleader suit to determine which of two claimants had succeeded to the title.

Respondent seems to rely upon the cases of *Thormann v. Frame*, 176 U. S. 350, and *Overby v. Gordon*, 177 U. S. 214, as sustaining its right to challenge the title of the Executors to the Delaware stock. These cases not only fail to support

this contention but hold to the contrary. There was involved in each case a judgment identical in legal effect with the judgment of the surrogate's court appointing the New York Trust Company as Administrator c. t. a., in that while both undertook to establish that the administration was domiciliary, both were *ex parte* as to other distributees. These judgments were relied on in *inter partes* probate proceedings in other states as establishing the title of the administrators named therein. When offered in evidence, they were excluded or construed as without effect except in the state where rendered, and the *inter-partes* proceedings went forward to judgment, establishing the title of the domiciliary representative. It is a remarkable contention to make, that such *ex parte* judgments, while not given any weight in *inter partes* probate proceedings wherein the title of the personal representative to all the personal property was established, could thereafter be utilized to hold the title of the Executors thereby established as without effect.

The cases cited on Page 12 of the brief for respondent, in support of the assertion that the administrator or executor is not in privity with the heirs or distributees so that a judgment against the latter does not bind the former, likewise lend no support to respondent's contentions. None of the cases cited involves the effect of a judgment establishing the title of executors as the domiciliary representatives of an estate. These authorities are concerned only with details of administration *after the nature of the administration has been settled*, such as the collection of assets, disputes over the title to real estate, and the settlement of decedent's debts. The distinction between the two classes of cases was made on Pages 18-20 of our main brief. In the cases cited by respondent, it is obvious that the administrator or executor as a trustee for creditors as well as distributees is interested in questions involving assets and liabilities of the

estate, but where the question is the determination of the nature of the administration, it is equally clear that the creditors are not interested for the reason that the rights of the creditors are not affected by how the question is determined. They are entitled to be paid in any event and the assets available for payment or the amount of the debts which must be paid are not affected by the decision of the question whether an administration is domiciliary or ancillary. As we have pointed out, only the heirs at law or distributees under the will are concerned with this question, and when they are bound by its determination, no one else is entitled to challenge that determination as no one else has any real interest in it.

In addition to the cases cited in our main brief, we wish to call the Court's attention to

In Re Gratton's Estate, 78 N. J. Eq. 225, 78 A. 813

in which the court, in considering the effect of a Pennsylvania judgment of distribution, made this statement making the distinction which we think clearly exists:

> "While ordinarily it is held that judgments against an administrator in one jurisdiction are not binding upon an administrator appointed in another jurisdiction for want of privity between them (Story, Confl. Laws, Sec. 522; Freeman on Judgments, Sec. 163; 23 Cyc. 1591), yet I think this rule properly applies only to judgments that manifest an indebtedness of the intestate or of the administrator, and does not extend to a decree settling the distribution of the surplus of the estate in the state of the domicile; such decree being, in effect, an adjudication against certain claimants of distributive shares, and not involving the claims of creditors; for, as already remarked, distribution is to be settled by the law of the domicile."

There could be no other rule in view of the full faith and

credit clause. As stated by this Court in *Baker v. Baker, Eccles & Company*, 242 U. S. 394, 401

> "No State need allow property of a decedent to be taken without its borders until debts due to its own citizens have been satisfied; and there is nothing in the Constitution of the United States aside from the full faith and credit clause to prevent a State from giving a like protection to its own citizens or residents who are interested in the surplus after payments of debts."

No one doubts that an administrator or executor is properly a party to an action to recover assets of an estate. The representative's duty is to collect such assets, pay the debts, and then to distribute the residue to those entitled. But a question of this character was not involved in the Delaware interpleader suit. No one denied that the stock should be administered as a part of decedent's estate. The only question was which of the claimants was entitled to the stock for the purposes of administration, and this is a question which had already been determined in a proceeding to which all persons entitled to be heard were parties.

The suggestion is made by counsel for respondent (See Pages 14-16 of respondent's brief) first that the case of *Buchan v. Williamson*, 142 Ga. 198, 82 S. E. 548, is not in conflict with the case of *Thomas v. Morrisett*, 76 Ga. 384, and further that, if there be a conflict, the latter case has been overruled by the former. As the decision in the *Buchan* case has already been sufficiently discussed (our main brief Pp. 18-19), we will confine ourselves at this time to the alleged overruling of *Thomas v. Morrisett*.

It is only necessary to point out that the principle relied on in *Thomas v. Morrisett* has been applied in two recent cases by the Supreme Court of Georgia, to wit:

Drake v. Drake, 187 Ga. 423, 1 S. E. (2d) 573

Dyal v. Dyal, 187 Ga. 600, 1 S. E. (2d) 660

In the *Drake* case the wife had obtained a divorce in Florida in which proceedings the husband denied that the wife was a resident of Florida. This issue was decided adversely to the husband and a divorce granted. The husband sought to raise the same issue in subsequent proceedings in Georgia, but the Georgia Supreme Court held that the husband was bound by the Florida judgment, saying:

> "The decree was valid in Florida; it is valid here. A judgment good at home is good everywhere. *Tompkins v. Cooper*, 97 Ga. 631, 25 S. E. 247; *Thomas v. Morrisett*, 76 Ga. 384. . . ."

The *Dyal* case was similar on its facts, both cases dealing with the effect of a judgment based upon personal service where a jurisdictional fact was involved. The court, in the *Dyal* case, did not cite *Thomas v. Morrisett* as in the *Drake* case, but cited the *Drake* case only.

The case of *Chicago, Rock Island & Pacific Railway v. Schendel*, 270 U. S. 611, cannot be distinguished upon the ground that the administrator was merely a trustee for a cause of action. It was not the nature of the property claimed by the administrator that accounted for the identity of the parties, but it was the fact that the widow was the sole beneficiary of any recovery that the administrator might make. The implication that the rule would have been different in the administration of an ordinary decedent's estate is refuted by *In Re Estate of Parks*, 166 Iowa 403, 147 N. E. 850, and the other cases of trusteeship cited by the court. The same test applies in the case of statutory administration to prosecute a recovery for the unlawful homicide of the decedent. If the representation of the administrator is solely

for the next of kin or the widow, a judgment against either in their individual capacity is a judgment binding on the administrator.

See the case of *Lucy Haines Gibson v. R. W. Solomon*, 136 Ohio St. 101, 23 N. E. 996, 126 A.L.R. 803, which follows the *Scheidel* case and draws the distinction between the two types of representation, distinguishing the case of *Mahoning Valley Rwy. Co. v. Van Alstine, Admr.*, 77 Ohio St. 394, 83 N. E. 601, 14 L.N.S. 893, and *May Coal Co. v. Robinet, Admr.*, 120 Ohio St. 110, 165 N.E. 576, 64 A.L.R. 441.

The effect of the Georgia judgment is conclusively to determine the title of the Executors to personal property wherever situated, while the effect of the New York judgment is to vest in the New York Trust Company as administrator c.t.a. the right of a local administration, that is, to administer property having a situs in the State of New York for the benefit of creditors and tax claimants therein, the residue to be turned over to the Executors for distribution according to the law of the domicile as determined between the parties at interest, that is, all possible distributees. The New York judgment has no force and effect outside of the State of New York. This is definitely settled by *Overby v. Gordon*, *Thormann v. Frame*, and *Baker v. Baker, Eccles & Company*, supra. Respondent seeks to put its judgment upon a parity with the Georgia judgment by, first, assuming that the domicile of the decedent was in fact in New York and, second, by contending that not having been heard on the probate proceedings in Georgia, it was entitled to question the finding of domicile in the Georgia proceedings.

The Executor's title to the stock may not be ignored in this way without denying to them the protection of the full faith and credit clause.

However Classified, Georgia Judgment Determined Petitioners' Title

Counsel for respondent in their brief enter into several involved discussions of the distinction which exists between a judgment in rem and a judgment in personam. No one disputes that a judgment in rem binds only property within the control of the court rendering the judgment; but it is equally clear that the state of the domicile has exclusive jurisdiction over personal property located elsewhere for the purposes of the succession and distribution. In any event, the Georgia judgment determined the title of the Executors as the domiciliary representatives in proceedings to which all persons interested were parties. As such it operates as a judgment in personam. However it may be classified, the result is the same, that it determined that the Georgia administration was domiciliary in nature, and such determination concluded the question as all persons entitled to raise it were served personally in the proceedings.

The Issue of Domicile Was Essential to, and Determined in, Georgia Proceedings

On Page 2 of respondent's brief, the statement is made that there was actually no contested trial in Georgia with respect to the true domicile of the decedent. The issue of domicile was tendered by the application of the Executors to probate the will in solemn form, and the determination of domicile was necessary before the will could be admitted to probate. The Supreme Court of Georgia so held when Hungerford asserted the contrary in the same proceedings on appeal (R. 105-110). Hungerford filed a caveat in which he asserted that the decedent died a resident of New York. The Executors were thus put on notice that Hungerford claimed that the administration in Georgia could not be domiciliary. Evidence was introduced on the question of

domicile, and it was found that the decedent at the time of her death was a resident of Georgia. Hungerford could not, as the Supreme Court of Georgia held, simply refrain from offering evidence on the question, and then later assert that he was not bound.

Existence of New York Creditors Immaterial

Counsel for respondent, on Pages 23 and 25, discuss the existence of creditors in New York. What is thus stated is based solely upon an allegation in respondent's answer in the trial court; but no evidence was offered in support of the allegation. The allegation, therefore, was not proved, and, if any implication is to be drawn, the implication would be that there were no New York creditors. The record shows that counsel for petitioners, (R. 183-184), in response to a question from the Chancellor, stated: "So far as I know there are no creditors of the decedent in the State of New York." Actually, it is altogether immaterial whether there were any New York creditors.

As to the "Sovereign Right" of the State of New York to Control the Administration

Counsel for respondent assert on Page 27 of their brief the "proposition of constitutional law" that the State of New York has the "sovereign right" to control the administration of the estate of one who died domiciled in New York. Precisely the same argument might be made with respect to the "sovereign right" of the State of Georgia. The "sovereign right" of the State of New York is not involved or challenged. The argument assumes, gratuitously, a New York domicile for decedent, although the right of the Delaware court to enter upon an inquiry as to decedent's domicile and to make an independent finding is the question in issue. In this case the question of domiciliary administration was determined in the probate proceedings where all

parties entitled to be heard on that question were before the court. When so determined, the judgment establishes the title of the domiciliary representatives to personalty having a situs in another state.

The fact that the property of an estate may be subject to the payment of tax claims does not result in divesting the title of the Executors any more so than the granting of ancillary administration where there is personalty situated in another state (See *Wilkins v. Ellett, Administrator*, 9 Wall. 740 at 742). The only result would be that if the tax claims were valid, the Executors would be required to pay such claims (along with any other valid claims against the estate) before distributing the residue to the beneficiaries. No "sovereign rights" are involved.

The Georgia judgment does not deprive the State of New York of the right to assert its claim for estate or inheritance taxes based on the claim that decedent died a resident of New York. What was determined in the Georgia proceedings was not any right of the State of New York but the forum for domiciliary administration and the title of the Georgia executors to the personalty for the purposes of administration and distribution. The State of New York is not concerned with the determination of the succession, and it is not bound by any findings in connection with that determination, in so far as its claims for taxes are concerned.

Counsel argue that, as a practical matter, giving effect to the finding of domicile in the Georgia proceedings will result in New York being deprived of any opportunity to collect its taxes. The argument presented is unique. It is based on the fact that the State of Georgia by statute extends the use of its courts to other states seeking to enforce liabilities for taxation, when such states extend like comity to the State of Georgia, and that as New York does not see

fit to extend like comity, then it would be barred the use of Georgia courts.

How this argument is relevant is not shown in respondent's brief. Aside from its irrelevancy, it is only necessary to point out that if New York may not use the courts of Georgia to enforce a tax obligation, this results not from the Georgia judgment, nor indeed from any act on the part of the State of Georgia, but solely from the act of the State of New York itself in refusing to extend the use of its courts to other states seeking to enforce tax obligations. In no event could this divest the title of the Executors to the personal property of the decedent.

There is No Merit in the Contention that the Court is Prevented from Giving Effect to Georgia Judgment By Failure to Prove its Effect Under Georgia Law

Respondent asserts that petitioners failed to prove the Georgia "law or usage" given to judgments of the character relied upon, and consequently it cannot be claimed that full faith and credit has been denied (Respondent's brief, Pp. 35-39).

This is the first time this point has been raised in the case. It was not made before the chancery court in Delaware or before the Delaware Supreme Court, and it is obvious from an examination of the opinion of the latter court, that its decision was in no way based upon any failure on the part of the petitioners to prove the effect of the Georgia judgment in Georgia.

The Georgia law was established in this case. Not only were the entire proceedings in the Georgia courts set forth by the Executors in exhibits to their statement of claim and the amendment filed thereto, but duly authenticated copies

of the entire Georgia proceedings beginning with the Ordinary's Court, and terminating with the decision and judgment of the Georgia Supreme Court were offered and received in evidence (R. 194, 195, 196, 197). Furthermore, the following sections of the Georgia Code of 1933 were set forth in the statement of claim and admitted in the answer:

Section 113-603 (R. 15, 52)

"The court of ordinary shall have exclusive jurisdiction over the probate of wills. The residence of testator at his death shall give jurisdiction to the ordinary of that county."

Section 113-602 (R. 16, 53)

"Probate by the witnesses, or probate in solemn form, is the proving of the Will, after due notice to all the heirs at law, by all the witnesses in life and within the jurisdiction of the court, or by proof of their signatures and that of the testator, if the witnesses are dead or inaccessible; and the ordering to record of the will so proved. *Such probate is conclusive upon all the parties notified, and all the legatees under the will who are represented in the executors.*" (Italics ours).

And Section 113-902 to the effect that under the intestacy laws of Georgia the husband is the sole heir at law of the wife when there are no children (R. 16, 53).

The Executors, in Paragraph 5, alleged that Robert Hungerford, the husband of decedent, Julia G. Murphy, her mother, and Katherine Riley, her sister, constituted all of the heirs at law of decedent and all of the beneficiaries named in decedent's Will; and in Paragraph 6 the Executors alleged that such persons were the only parties entitled to be heard on the question of the probate of decedent's Will (R. 15). Respondent admitted the allegations of these paragraphs (R. 53).

Respondent's answer asserted first that the proceedings in Georgia did not establish the title of the Executors as the domiciliary representatives as the petition for probate incorrectly averred the residence of the testatrix (R. 52). After the filing of the answer, this question was decided adversely to respondent's contention by the Supreme Court of Georgia (R. 105). The other contention was that decedent died a resident of New York and consequently the New York Administrator and not the Georgia Executors was the domiciliary representative.

That such a judgment has a conclusive effect in Georgia is obvious from Georgia Code Section 113-602. That the Georgia courts have construed said Code Section to mean what it says concerning the conclusive nature of a solemn form of probate is seen by reference to two cases cited in the opinion of the Georgia Supreme Court (R. 109), to wit, *Tant v. Wigfall*, 65 Ga. 412; *Wash v. Dickson*, 147 Ga. 540. It is only necessary to quote the first headnote in the latter decision as the ruling is the same in both cases:

> "A judgment of a Court of Ordinary, granting letters of administration upon an estate, by a judgment of a court of general jurisdiction, cannot be collaterally attacked unless the record negatives the existence of necessary jurisdictional facts."

This construction of Georgia law has been followed by this Court in *Veach v. Rice*, 131 U. S. 293. This Court, on Page 314 of that decision, says:

> "The Courts of Ordinary in Georgia are Courts of original, exclusive and general jurisdiction over decedents' estates, and the subject matter of these orders, and its judgments, are no more open to collateral attack than the judgments, decrees or orders of any other court."

The statutes pleaded by petitioners and admitted by respondent, the proceedings in Georgia, including the judgment rendered and the opinion of the Supreme Court of Georgia, make clear the law or usage in Georgia as to the effect to be given to the judgment.

The Court's attention is called to the Delaware statute, Code Section 3868, expressly recognizing the authority of foreign executors in Delaware, providing in part as follows:

> "Letters testamentary, or of administration, granted in any other State, and produced under the seal of the office, or Court, granting the same, shall be received in this State as competent authority to the executor, or administrator, therein named; . . ."

Counsel for respondent assert that the effect which petitioners seek to have given to the Georgia judgment is one that is not apparent on its face, for the reason that it does not purport to bind the New York Administrator c. t. a. It is universally the law that executors named in a will succeed to the title to the decedent's personalty. This result follows from the Georgia judgment as much as it follows from a money judgment that the plaintiff is entitled to a recovery of money since both are judgments *inter partes*.

That this rule is followed by the Supreme Court of Delaware is manifest by the case of

Lutz v. Roberts Cotton Oil Co., 26 Del. 227, 82 Atl. 601

from which we quote:

> "The rule is unquestioned that when a court has jurisdiction of the subject matter of a suit and of the parties to it, its judgment upon the merits of the controversy is conclusive between the parties upon every

question of fact directly in issue and determined in the action, and that to such a judgment, whether declared upon as a cause of action or pleaded as a defense, the courts of all the states are bound to give full faith and credit."

The Georgia judgment and the proceedings in which it was rendered show clearly that the nature of the administration was determined to be domiciliary and not ancillary and that petitioners qualified as the domiciliary representatives of the estate. As such, they became vested with title to the personalty of the decedent wherever situated, subject only to the right of a foreign state to administer property within its own borders for the protection of its own citizens. This general rule is recognized by the Supreme Court of Delaware (R. 225) and the cases of this Court there cited.

As to Georgia Judgment Determining Domicile Not Being Conclusive as to Domicile Under Delaware Law

Counsel for respondent assert on Pages 46-50 of their brief that as the law of domicile in Georgia may conceivably be different from the law of domicile in Delaware, it follows that a finding of domicile in Georgia is not binding on the Delaware courts. There is nothing in the record to show any substantial difference in the law of domicile as applied by the two states, but even if this should be true, we fail to see in what manner it affects the question now before the Court. The rules with reference to the admission of evidence might be different in the two states, but the result would not be affected. The Delaware Supreme Court has correctly set forth the results which flow from the establishment of a domiciliary administration (R. 225). What is important is the result, i. e. the establishment of the domiciliary administration and the results which flow therefrom, and not the various rules of evidence and law producing that result. There is nothing in the decisions of this Court

construing the full faith and credit clause which indicates a requirement that the rules applied in arriving at a judgment in one state must be identical with those which would be applied in any state where the judgment is relied on.

CONCLUSION

Counsel for respondent have advanced no arguments which support the action of the Supreme Court of Delaware in first inquiring into the factual issue of domicile instead of first determining whether it had the right to make such an inquiry. As the title of the Executors had been determined by the Georgia judgment to be that of domiciliary representatives, and such determination was conclusive in that it bound all persons entitled to be heard on the question, it follows that the Supreme Court of Delaware had no right to inquire into the question of domicile, and its decision that respondent was entitled to the stock denied to the Georgia judgment the full faith and credit to which it was entitled.

It is respectfully submitted, therefore, that the judgment of the Supreme Court of Delaware should be reversed.

DAN MACDOUGALD,
JAMES A. BRANCH,
ROBERT S. SAMS,
Atlanta, Georgia;

AARON FINGER,
Wilmington, Delaware,

Attorneys for Petitioners.

Of Counsel:

MACDOUGALD, TROUTMAN & ARKWRIGHT,
Atlanta, Georgia

RICHARDS, LAYTON & FINGER,
Wilmington, Delaware